

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

AUG 05 2020

UNITED STATES OF AMERICA,
Plaintiff,

JULIA A. DONLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

Case No.:

4:18-CR-17

- VS -

Tyrone Young,
Defendant. /

MOTION FOR LEAVE
TO SUPPLEMENT
28 U.S.C. § 2255

COMES now, the defendant, Tyrone Young, pro-se, referred hereafter to as, ("Young") respectfully moves for leave, to Supplement his 28 U.S.C. § 2255 petition.

And in Support thereof, Young provides as follows:

This Honorable Court has authority and discretion to grant young leave to amend / Supplement his 28 U.S.C. § 2255, under Fed. R. Civ. P. Rule 15. Rule 15(a)(1), permits a litigant to amend a pleading "once as a matter of Course" subject to certain time constraints, of which, none are at issue here.

See Fed. R. Civ. P. 15(a)(1).

However, when a party seeks to amend a Complaint more than 21 days after the filing of a responsive pleading, the other party's Consent or leave of Court is required in order to amend the Complaint. See, Fed. R. Civ. P. 15(a)(2).

More importantly, as of 08/01/2020, the Certificate of Service date of this instant Motion for leave, the Government has yet to file their responsive pleading.

Additionally, in such a case, the Court is to grant leave to amend "freely" when "justice so requires." *Id.*; See also, Foman v. Davis, 371 U.S. 178, 182 (1962)

("In the absence of any apparent or declared reason -- such undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc -- the leave sought should, as the rules require, be "freely given.").

Due to necessary implementations at Young's Federal Correctional Institution, to help stop the spread of COVID-19, inmates have limited access to the law library, and no access at all to typing material.

Therefore, this instant pleading will be submitted hand written, as neatly as possible.

Wherefore, young respectfully request for this Honorable Court to accept this instant pleading, according to the standards set forth in Haines v. Kerner, U.S. (1972), which sets the standards to "less stringent," for pro-se litigants, as opposed to the standards set forth for professional lawyers.

Now, Young would like to supplement his 2255, to add an ineffective assistance claim.

That is: Young's attorney was ineffective for failing to move for a "dismissal" of the Count (8) Eight: "Aggravated Identity Theft," in violation of 18 U.S.C. § 1028A, due to the facts and the Government's version of the offense, do not support a conviction for

Count 8, Aggravated Identity Theft.

Here, there simply was no Identity Theft involved with this offense, much less Aggravated Identity Theft.

As the Government admits openly in the "Change of plea" transcripts, on pg's 26, 27, 28, 29, 30, 31, & 32, the Government clearly explains how there was no Theft of Identity ever committed by young. As the Government points out on the above pages of the "Change of plea" transcripts,

Pg 26,

"MS Munro: ... enroll these students into online universities and into courses in order to attain the disbursed financial aid, which he then used for partly his own purposes, and then left a part to the straw student to use for whatever purpose they saw fit."

"The Court: Were they known participants, were they willing participants?" pg 27,

"MS Munro: That's an excellent question. And I think there are varying degrees of Complicity."
Pg 27. Change of plea Transcripts.

"Ms Munro: ... There are individuals connected with this investigation of which Mr. Young is now aware that we believe actively participated in this alongside Mr. Young. They understood what the game was and what the plan was." pg 27, Change of plea Transcripts.

"The Court: Did they get any kickback?"
pg 27.

"Ms Munro: And they do. They take, typically a portion of the funds, or they take a simple payment in order to recruit or to find other individuals who are willing to provide their PII." pg 27, Change of plea.

"Typically, in these types of cases, victims do voluntarily give their identifiers at least initially."

"With respect to the aggravated identity theft, again, the Cornerstone of those Charges is that the personal identifiers had to be used for an unlawful purpose, which in this case was the Commission of the mail fraud and the student loan fraud, without the authorization of the individual." pg 29. Change of plea Transcripts

"We had a number of witnesses in this Case who provided Statements about the extent to which they involved with providing their PII initially," Pg 29, Change of plea.

"The Court: Go back to Count Eight, (M.T.) again. How was his identity Stolen?"

Here, even the Court showed some interest as to: "how was his identity Stolen?" of which, Ms Munro never explained.

Then, unexplainably, Ms Munro goes on to talk about:

"This particular victim, (T.T.), was actually a resident of a different apartment Complex in Danville."

The Court asked Ms Munro about, how was the identity of (M.T.) Stolen? Not (T.T.)

The Government never established the factual basis for Count eight, nor did they answer the Court's question.

"How was his identity Stolen?" M.T., not T.T.

At this point, Youngs trial Counsel was ineffective for failing to ¹⁾ object to the Government's failure to establish the factual basis for Count 8, Aggravated Identity Theft, and or 2) Moving for a dismissal of Count 8, due to the Government's failure to establish a factual basis for the conviction of Count 8. The Government failed to establish any Identity Theft.

Had Youngs Counsel brought this issue to the attention of the Court, via an objection, and or a dismissal of Count 8, this Honorable Court would not have accepted the Governments factual basis that they established for Count (8) Eight during the Change of plea process.

And due to Count 8, young was subjected to a mandatory Minimum Sentence of 24 Months, to be ran consecutive to Counts 1, and 11, therefore, young can easily show how his Counsel's deficient performance caused him prejudice, the 2nd Strickland prong.

Conclusion

Wherefore, for the foregoing reasons, while Supplemented to his original §2255 petition, Young respectfully request for this Honorable Court to vacate, Set Aside, and or Correct His Sentence, under 28 U.S.C. § 2255, and Hold an Evidentiary Hearing under 28 U.S.C. § 2255(b).

Dated: 8/2/20

Encs.

cc:

- 1) Clerk of Court
- 2) U.S. Attorney's Office

Respectfully Submitted,
Young

Tyrone Young
Defendant - Pro-Se

Federal Reg. No. 2208-084

F.C.I. McDowell

P.O. Box 1009

Welch, WV 24801

CERTIFICATE OF SERVICE

Be it known, that on 08/01/2020, I, Tyrone Young, did serve one true and correct copy of the foregoing: "Motion For Leave, To Supplement 28 U.S.C. § 2255," to the following hereafter listed people, via U.S. Postal Mail, postage pre-paid, and signed under the pains and penalties of perjury as per 28 U.S.C. § 1746 provides for, ~~at~~

Dated: 8/2/20

CC:

1) Clerk of Court

2) U.S. Attorney's office

Respectfully Submitted,
Tyrone Young

Tyrone Young
Defendant - ~~pro se~~
Federal Reg. No.: 22208-084

F.C.I. McDowell
P.O. Box 1009
Welch, West Virginia
24801

1 disbursement that was made to the student loan account of one
2 of the individuals who lived in an apartment complex in
3 Danville that Mr. Young approached and signed up for school.
4 This \$2533 was just one of several financial aid disbursements
5 that were made in the name of this particular victim. They
6 were made by prepaid debit card through the post university.
7 We were able to verify that, through the Department of
8 Education's records that our DOE investigators have direct
9 access to, that was mailed to the victim, M.T. We did verify
10 through account records that Mr. Young withdrew funds off of
11 that particular debit card before allowing the rest of the
12 funds to flow through to the victim.

13 THE COURT: Go back to Count Eight, M.T. again. How
14 was his identity stolen?

15 MS. MUNRO: Yes. This particular victim, T.T., was
16 actually a resident of a different apartment complex in
17 Danville. What we noticed during the investigation was that
18 there was a core group of students who all lived in the same
19 apartment complex. When federal investigators interviewed
20 these individuals, one of them, the victim M.T. was acquainted
21 with this particular individual identified by the initials of
22 T.T.

23 This person, T.T., had visited that apartment
24 complex but did not live there. At the time that federal
25 investigators approached this particular victim, this victim

1 had no awareness of how the identifiers had been obtained, did
2 not authorize them to be used for any purpose relating to
3 student aid, and was not aware that there were IRS and DOE
4 debts in his name until he was approached by investigators.

5 THE COURT: Any corrections or additions,
6 Mr. Doubles?

7 MR. DOUBLES: No, sir, only to say that the
8 overwhelming majority of these other individuals were
9 complicit on several levels, but that's the only
10 clarification.

11 THE COURT: All right. I assumed that that might be
12 in the background somewhere.

13 MR. DOUBLES: Yes, sir.

14 MS. MUNRO: Thank you, Your Honor.

15 THE COURT: All right. I find that there's an
16 adequate factual basis and I will accept the pleas. Is there
17 any issue about the custody for Mr. Young?

18 MR. DOUBLES: Not that I am aware of, Your Honor, at
19 this time.

20 MS. MUNRO: No, Your Honor. Mr. Young is currently
21 on bond.

22 THE COURT: I assume he's on bond?

23 MR. DOUBLES: Yes, sir.

24 THE COURT: His own recognizance?

25 MR. DOUBLES: Yes, sir.

Lynne Young # 22208-084
Federal Correction Institute
McDevil
P.O. Box 1009
Weth, WA 98001



CHARLESTON W
03 AUG 2020

Legal mail

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